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GENERAL COUNSEL'S OPINION NUMBER 55-26, DATED 20 JULY 1955

Although members of an employee's household ordinarily are those dependent upon and residing with the employee, temporary absence from home does not necessarily have the effect of removing a person from the category of "member of the employee's household."

TO THE CHIEF, FE

1. A dispatch, dated 23 November 1954, from Chief, \_\_\_\_\_ Base, to Chief, FE, was brought to the attention of this Office by H., who provided additional factual information, partially at variance with that set forth in the dispatch.

2. As detailed by H., the facts are these. H. is divorced from his wife. The decree requires that he contribute to his daughter's support; her custody is vested in his ex-wife, with the provision that he is to have custody for a minimum of two months each year, the timing and duration of such custody to be determined by the mother. When H. was ordered PCS from Washington to \_\_\_\_\_ in May, 1953, his former wife and daughter were in Kansas City, and the mother had agreed to relinquish custody of the daughter so that she might accompany H., to remain with him for an unspecified period. Consequently, H. requested and was issued travel orders authorizing his daughter's transportation from Kansas City to \_\_\_\_\_. When he was ready to pick up his daughter at Kansas City, he found that his former wife had changed her mind and refused to relinquish custody, so he proceeded to \_\_\_\_\_ alone. Subsequently the mother and daughter went to G--, on private business. The mother then agreed to release the daughter to H.'s custody and permitted her to proceed to \_\_\_\_\_ for an indefinite stay. H. claims reimbursement for his daughter's one-way passage from G-- to \_\_\_\_\_ in September, 1953. About one month after the daughter reached \_\_\_\_\_ the mother again changed her mind and reclaimed custody. H. returned the girl to G-- at his personal expense. At the time of travel, she was nine years old.

3. PL 110, section 5(a)(1)(b) authorizes payment of the travel expenses of "members of the family" of any Agency employee when pro-

... Had H.'s daughter traveled with him from Washington then there would have been no question of his entitlement to reimbursement.

4. Had she traveled from Kansas City, as was originally planned, the entitlement would be equally valid. 25 Comp. Gen. 325, 4 October 1945, states: "Members of an employee's household ordinarily are those dependent upon and residing with the employee. Temporary absence from

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home for the purpose of attending school, visiting, or like temporary purposes -- at the time of the transfer of the employee -- does not have the effect of removing such individuals from consideration as members of the employee's household." There is room for reasonable difference of opinion in making the administrative determination as to whether a given absence is "temporary" but, in the instant case, it is clear that the daughter was a member of H.'s household at any time that the mother was willing to relinquish custody and he was willing to accept it, that the initial step in this sequence of events was outside of his control, and that during the period involved he intended his daughter to be a member of his household subject only

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"When an employee acquires additional dependents (through birth, marriage, legal adoption, or changes in dependency) subsequent to the issuance of a travel authorization but before the expiration of the time limitation, travel expenses and per diem for such additional dependents shall be allowable under the travel authorization in the absence of any specifically stated limitation." (Emphasis supplied)

5. We perceive no difference in the situation as it actually developed, where the mother relinquished custody while in G-- and the child was brought from G-- to [ ] by the employee. It was throughout the intent of H. to accept custody of his daughter and to consider her as a member of his household whenever the mother relinquished custody which, while in G--, she finally did. The requisite change in dependency was effected, and section 7(a) of [ ] is applicable.

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6. Although the travel performed was between G-- and [ ] and the travel order authorized travel of the daughter from Kansas City to [ ], such variation is permissible under [ ] "Itinerary Changes", which permits variation in itinerary without amendment of the travel order provided only that the actual cost claimed shall not exceed the constructive cost authorized.

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7. That the daughter remained in [ ] only a month and was then returned to the mother in G--, at no expense to the Government, is irrelevant. It was H.'s stated intention throughout to keep the child in his household so long as he should remain [ ]. The mother's determination that she desired to reassert her rights to custody was a matter as much out of H.'s control as though, for example, the child had become ill and required special medical service which could not be obtained in [ ].

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8. It is the opinion of this Office that if the claim is otherwise in order, and if the proper administrative officials are satisfied of the accuracy of the facts as stated by H., there is no legal objection to its payment.

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